Amendment Transmittal Letter

Docket Number
WSP242US

Address To
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Title of Invention

COSMETIC COMPOSITION PROMOTING OXYGEN TRANSPORT INTO THE SKIN

First Named Inventor	Gabriele Blume
Application No.	10/567,631
Filing Date	February 08, 2006
Examiner	Jennifer Ann Berrios
Art Unit	4121

Transmitted herewith is an amendment in the above-identified application.

The fee has been calculated and is transmitted as shown below.

☒ **Applicant claims Small Entity Status.** See 37 CFR 1.27.

Fee Calculation

Claims as Amended

For	#Filed	#Previously Paid For	#Extra	Rate	Fee
Total Claims	24	- 24 =		x 26 =	
Total Indep. Claims	1	- 3 =		x 110 =	
Multiple Dependent Claims (check if applicable) ☐					
				TOTAL	$0

Method of Payment

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Signatory Capacity	Attorney for Applicant(s)	E-mail Address			
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Matter of United States Patent Application:

Applicant(s):	Gabriel Blume et al.	Examiner:	Jennifer Ann Berrios
Application No.:	10/567,631	Art Unit:	4121
Filed:	February 8, 2006		
For:	COSMETIC COMPOSITION PROMOTING OXYGEN TRANSPORT INTO THE SKIN		

Confirmation Number: 1303

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Michael L. Dunn
Reg. No. 25330

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Honorable Sir:

This is in reply to the official action of January 5, 2009 requiring an election between four species.

At the outset the requirement seems confusing by mixing U.S. and PCT practice.

All that is needed in PCT Practice is unity of invention.

37 CFR 1.475 says:

"(a) An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The

expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art."

All claims of the present invention has the special technical feature of **" A cosmetic composition to assist oxygen transport into the skin with vesicles as carriers, wherein the composition comprises ...lipid ... and ...a fluorocarbon or mixture of fluorocarbons charged with oxygen."**

The Examiner is referred to MPEP 1850 I.

"....In applying **PCT Rule 13.2** to international applications as an International Searching Authority, an International Preliminary Examining Authority and to national stage applications under **35 U.S.C. 371**, examiners should consider for unity of invention all the claims to different categories of invention in the application and permit retention in the same application for searching and/or preliminary examination, claims to the categories which meet the requirements of **PCT Rule 13.2**....

The categories of invention in former PCT Rule **13.2** have been replaced with a statement describing the method for determining whether the requirement of unity of invention is satisfied. Unity of invention exists only when there is a technical relationship among the claimed inventions involving one or more special technical features. The term "special technical features" is defined as meaning those technical features that define a contribution which each of the inventions considered as a whole, makes over the prior art. The determination is made based on the contents of the claims as interpreted in light of the description and drawings. Chapter 10 of the International Search and Preliminary Examination Guidelines also contains examples concerning unity of invention...."

The Examiner is also referred to MPEP 1850 II:

" ....From the preceding paragraphs it is clear that the decision with respect to unity of invention rests with the International Searching Authority or the International Preliminary Examining Authority. However, the International Searching Authority or the International Preliminary Examining Authority should not raise objection of lack of unity of invention merely because the inventions claimed are classified in separate classification groups or merely for the purpose of restricting the international search to certain classification groups.... If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further invention...."

Election of species is a U.S. practice and has no place in PCT practice as applied to the present application where, as here, there is no reasonable basis for application of prior art to generic claims.

The Examiner has cited U.S. Patents 6,022,561; 3,645,390; and 3,890,333. None of these patents, alone or together, address the "special technical features" of the present claims under either 35 U.S.C. 102 or 35 U.S.C. 103.

The references cited by the Examiner merely individually address different possible components of the presently claimed cosmetic composition and none of the cited patents even mention "fluorinated hydrocarbon" for any purpose and certainly do not disclose or suggest "fluorinated hydrocarbon" in such a composition, which is at the heart of the oxygen carrying portion of the presently claimed **cosmetic composition to assist oxygen transport into the skin**.

The present claims are clearly united by a special technical feature and have "unity of invention" under PCT Rules.

The claims may thus not be restricted from each other.

Group 1) directed to claims 13-36 is elected with traverse. Claim 13 is the only independent claim and includes "lipid conjugate", referred to by the Examiner as "specific lipid conjugate", even thought he word "specific" does not appear in the claims. All other claims are directly or indirectly dependent upon claim 1 and thus all also contain "lipid conjugate" (Species 1).

The mere addition of additional components, i.e. "lipid conjugate solvent", "nicotinic compound" and/or "alcohol", in subclaims, does not remove "lipid conjugate" from the claims in which additional components are added.

The restriction should therefore be withdrawn for two major reasons, i.e. a) there is unity of invention and b) even if there weren't unity of invention, all claims read on species (1).

Respectfully submitted,

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MLD/mjk